ABDULLAH KARIM

v.

AHMAD ABDULLAH & ANOR.

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[CIVIL SUIT NO. 25-243-1988]
4 APRIL 1991

TORT: *Negligence - Personal injury - Warning - Whether adequate - No independent evidence on behalf of bus driver - Whether failed to keep a proper lookout - Failure to call essential witness - Adverse inference - Distance to be kept by vehicles - Plaintiff a learner driver - Carrying pillion - Extra careful - Contributory negligence - Highway Code, r. 22 - Motor Vehicles (Driving Licence) Rules 1959, r. 16 - Evidence Act 1950, s. 114(g).*

The plaintiff who was a learner driver, and who was carrying a pillion, collided into the rear of a bus driven by the 1st defendant.

The plaintiff alleged that the bus stopped suddenly without giving any signal and without pulling onto the side of the road.

The issue for the Court was whether the 1st defendant gave adequate warning to the plaintiff, and whether the plaintiff kept a safe distance from the bus as stipulated and provided for by the Highway Code.

Held:

[1] The evidence adduced indicated that the 1st defendant failed to keep a proper lookout before he stopped the bus to pick up the would-be passenger. However, it was also obvious that the plaintiff failed to carry out his duty as the rider of the motor cycle by not keeping to a safe distance while following behind the bus in breach of r. 22 of the Highway Code.

[2] As the plaintiff was a novice rider holding a provisional licence, he should have been extra careful especially when carrying a pillion.

[3] In the circumstances of the case, the plaintiff was held to be 75% liable for the accident and the 1st defendant 25% liable.

[Order accordingly.]

Cases referred to:
Haron v. Macaulay [1969] 1 MLJ 169
De Cotta v. Tan Hock Lee [1972] 2 MLJ 173

Legislation referred to:
Evidence Act 1950, s. 114illus.(g)
Highway Code, r. 22
Motor Vehicles (Driving Licence) Rules 1959, r. 16

Other sources referred to:
Bingham's Motor Claims Cases

For the Plaintiff - Thara Singh Sidhu; M/s. Thara Singh Sidhu
For the Defendants - S.V.K. Singham; M/s. S.V.K. Singham & Co.

JUDGMENT

LC Vohrah J:

The plaintiff's claim is for damages for personal injuries and consequential loss suffered by him as a result of the alleged negligence of the first defendant in driving a motor bus No. JY 4505 along the Endau-Mersing road.

The accident occurred in the early afternoon of 24 December 1984 when the plaintiff whilst driving his motorcycle No. JED 4335 with a pillion in the direction of Mersing Town collided into the back of a motor-bus driven by the first defendant when he stopped the bus on the Endau-Mersing road about 2½ miles from Mersing town.

The evidence of the plaintiff was as follows. He worked as an agricultural technician with the Lembaga Peladang and at the time in question was returning to his office at the 1¼ milestone Jalan Endau, Mersing. He was returning, after his midday meal, from his father's house in Felda Endau which was about 18 miles from his office. He was driving his motor-cycle with a friend Ahmad Sanusi (PW2) as pillion and he was travelling at a speed of 70 to 80 kilometers per hour. His speed varied according to the nature of the road; he slowed down when the road was not straight. When he arrived at about the 1½ milestone Endau Road he saw a bus in front of him and he then followed the bus at a distance of 60 feet for about a quarter of a mile at a speed of 50 kilometers per hour, at the same speed at which the bus was travelling. The bus then stopped suddenly without giving any signal and without pulling into the side of the road. On seeing this he applied his brakes and swerved to the right but in the event he collided into the off side rear of the bus. He then lost consciousness.

The pillion's evidence supported the plaintiff's that the motorcycle was following the bus at a distance of about 60 feet for about one quarter of a mile and that the bus stopped suddenly causing the plaintiff to lose control of his motor-cycle and colliding into the offside rear of the bus despite the plaintiff's efforts in applying his brakes.

The first defendant's story was that at about 1 p.m. he was making his third round trip to Mersing from Endau and as he was about 1½ miles from the town of Mersing he saw a person about 100 meters in front of him signalling to him to stop. He then put on his left indicator light and looked at the three rear view mirrors that were on his left, his right and in front of him. He saw no vehicles behind his bus. He then stopped his bus at the point where his would-be passenger was and whilst this person was getting on the bus he heard a loud bang at the back of the bus and it shook. He then got down from his driver's seat and went to the rear of the bus where he found a motorcycle together with its rider and pillion lying on the main road. He then instructed his conductor to take control of the situation and he himself proceeded to the police station where he lodged his police report AB1.

As was stated by MacIntyre FJ in *Haron v. Macaulay* [1969] 1 MLJ 169:

> one of the common causes of accidents of this nature is the failure on the part of the driver of a vehicle while driving at a fast speed on a country road to give adequate warning to vehicles following closely behind of his intention to either slow down or stop his vehicle.

Since the collision occurred within seconds after the bus had stopped it is essential to consider whether the first defendant gave adequate warning in order to decide whether liability can be attributed to the first defendant. He denied stopping his bus suddenly. He also denied any of his passengers were injured as a result of his stopping his bus. His version of how the accident occurred was only corroborated by his police report. No independent evidence

in the form of evidence from the conductor or any passenger was brought forth although the conductor could have been compelled to attend Court under subpoena and give evidence as his whereabouts were known to the first defendant. I think it is legitimate in the circumstances to draw an adverse inference against the defence under s. 114(g) of the Evidence Act 1950 for its failure to call the conductor and I do so. Further from his own evidence it is clear that the first defendant did not make any attempt to pull into the side of the road in order to stop and pick up the would-be passenger. It is also clear that he did not see the plaintiff's motor-cycle following him when he should have done as the plaintiff had been following him for about a quarter of a mile at a distance of 60 feet. This would indicate that the first defendant had failed to watch his rear-view mirrors and thus failed to keep a proper lookout before he stopped his bus in order to pick up the would-be passenger. I accordingly find that there was negligence on the part of the first defendant when he stopped his bus as he did in the actual line of his travel without first pulling in to the left edge of the road before picking up his would-be passenger. However the next question I have to ask is: Did the plaintiff contribute to his injury by following the bus on his motorcycle at a distance of 60 feet behind the bus when both vehicles were travelling at about the same speed? The answer, I think, is obvious as he failed to carry out his duty as the driver of a motor-cycle following another vehicle in breach of r. 22 of the Highway Code (See L.N. 165/1959) which stipulates that the following driver should allow at least one car's length between his car and the vehicle in front for, every ten miles an hour of its speed and, according to *Bingham's Motor Claims* cases, the distance should be doubled in the case of a two-wheel vehicle: See *De Cotta v. Tan Hock Lee* [1972] 2 MLJ 173. Although it was established in evidence that the plaintiff was a learner driver he was not prohibited by law to carry a pillion if he was under the supervision of the pillion and the pillion himself had a valid licence to drive a motor-cycle which he had held for at least two years: r. 16, Motor Vehicles (Driving Licence) Rules 1959 (L.N. 172/1959). The investigating officer PW5 testified that he did not ascertain whether the pillion had a licence or not and although the plaintiff might not in this particular case have committed an offence under the road traffic legislation it did not in my view derogate from the fact that he as a novice driver should have been extra careful especially when he was carrying a pillion. In the circumstances of this case I would assess his responsibility at 75 per cent and the first defendant's at 25 per cent and I enter judgment for the plaintiff accordingly. As the quantum of damages has been agreed at RM242,345 on the basis of one hundred percent liability, the plaintiff will receive twenty-five percent of that sum amounting to RM60,586.25 with interest at 8 percent per annum which, it has been agreed, is to take effect only from today. The plaintiff will be paid his costs to be agreed or taxed.

Also found at [1991] 2 CLJ 1490